OMB’s “Super Circular”—How Federal Grants Management Reform Will Affect RDO’s

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National Association of Development Organizations
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Federal Grant Reform—The Process

• Presidential Direction (Executive Order; Memorandum to Agencies)
• OMB “Trial Balloons” (*Federal Register*, 2/28/12)—Comments Solicited
• OMB Draft Proposal (*Federal Register*, 2/1/13)—More Comments Solicited
• OMB Guidance Issued (12/26/13)
The Players

- OMB, Office of Federal Financial Management
- Council on Federal Assistance Reform (COFAR)
- Federal Awardmaking Agencies
- Inspectors General (CIGIE)
- “The Community of Independent Auditors”
- Recipients and Subrecipients
The Intent

• Consolidate
• Streamline
• Harmonize

• As a Result, Simplify
But Also...

• Mandate Content and Timing of Federal Program Announcements
• Ensure Better Federal Agency and Pass-through Entity Review of Financial Risk and Merit of Applications
• Provide Clearer Instructions for “Robust” Oversight of Subrecipients
• Hold Federal Agencies More Accountable for Getting Results and Addressing Weaknesses Among Recipients
Say a Long Goodbye to...

- Administrative Requirements in OMB Circular A-102, Common Rule; and OMB Circular A-110
- Cost Principles in OMB Circulars A-21, A-87, and A-122
- Audit Policies in OMB Circulars A-133 and A-50
- Federal Program Information Requirements in OMB Circular A-89 and OMB’s Directive on Federal Agency Assistance Program Announcements (Federal Register, 6/23/03)
Say Hello to...

• “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”
• The “Super Circular”
• The “Omni-Circular”
The Administrative Procedure Act and Why That’s Important

• Federal “Regulations” (with the Force and Effect of Law)

• Legal Sources and Authority for Federal Grants
  --- Statutes
  --- Governmentwide Directives (such as Presidential Executive Orders)
  --- Regulations
  --- Terms and Conditions of Grant Agreements
The Final Product—2 CFR 200

• The Commentary (78 FR 78590-78608, 12/26/13)
• Components
  --- Subpart A—Acronyms and Definitions
  --- Subpart B—General Provisions
  --- Subpart C—Pre-award Federal Requirements and Contents of Federal Awards
  --- Subpart D—Post Federal Award Requirements
  --- Subpart E—Cost Principles
  --- Subpart F—Audit Requirements
The Final Product—2 CFR 200

• Appendices
  -- (I) Full Text of Notice of Funding Opportunity
  -- (III) Indirect (F&A) Cost Procedures for Educational Institutions (IHE)
  -- (IV) Indirect Cost Procedures for Nonprofit Organizations
  --- (V) Procedures for State, Local, and Tribal Wide Central Service Cost Allocation Plans
  --- (VI) Public Assistance Cost Allocation Plans
  --- (VII) State, Local and Tribal Government Indirect Cost Proposals
  --- (VIII) Nonprofit Organizations Exempted from Subpart E of 2 CFR 200
  --- (IX) Hospital Cost Principles (Currently 45 CFR 74, Subpart E)
  --- (X) The Single Audit Data Collection Form (SF-SAC)
  --- (XI) The Single Audit “Compliance Supplement”
Implementation

• Policies Applicable to Federal Agencies (Effective 12/26/13)
• Federal Agencies Submitted Draft Implementing Regulations to OMB (6/26/14)
• Full Text of Agency Regulations to be Uniformly Effective (12/26/14)
• Audit Threshold Change (FY Beginning After 12/26/14)
• Must Be Referenced in Your Grant and Subgrant Agreements
Applicability

- Mandatory for Awards to States, Local Governments, IHE’s, Nonprofit Organizations
- Discretionary to Commercial Organizations and Foreign Entities
- Direct Federal Grants and Cooperative Agreements (with Exceptions in 2 CFR 200.101(d))
- Subgrants to Subrecipients (Flow Through)
- Procurement Contracts under Grants
- OMB Granted Exceptions (2 CFR 200.102)
- Federal Agency Case-by-Case Exceptions
- Innovative Program Designs (OMB M-13-17)
- Inconsistent Policies Superseded
New or Revised Requirements for Federal Agencies

• Choice of Instruments (200.201)
• Public Notice and Funding Opportunities (200.202-4)—CFDA and Grants.gov
• Preaward Risk Assessment (200.205)
• Requirements for Adherence to Paperwork Reduction Act (200.206)
• Specific Conditions ("High Risk") (200.207)
• Annual Certifications (200.208)
• Content of a Federal Award (200.210)
• Public Access to Award Information (FFATA and FOIA)
Post-Award Administration

• New Sections on:
  --- Mandatory Disclosure (200.112; 200.113)
  --- Performance Management (200.301)
  --- Internal Controls (200.303)
  --- “Disputes” (200.341)
• (Essentially) Unchanged Sections on:
  --- Financial Management (200.302)
  --- Bonding (200.304)
  --- Payment (200.305)
  --- Cost Sharing or Matching (200.306)
  --- Program Income (200.307)
  --- Revision of Budget and Program Plans (200.308)
  --- Property Standards (200.310-316, 200.329)
  --- Remedies for Noncompliance (200.338-340, 342)
  --- Close-out and Continuing Accountability (200.343-345)
Post Award Administration

• Changes in Substance, Location, or Both
  --- Procurement Standards (200.317-326)
  ----- Effect on Nonprofits and IHE’s
  --- Financial and Performance Reporting (200-327-328)
  --- Subrecipient Monitoring and Management (200.330-332)
  ----- Subrecipient vs. Contractor Determinations
  ----- Risk Assessment of Potential Subrecipients
  ----- Subgrant Agreement Content
  ------ Required Recognition of Subrecipient Indirect Costs
  ----- Subrecipient Monitoring Procedures (Required v. Discretionary)
  --- Retention Retention and Access (200.333-337)
  ----- Machine Readable Formats
The New Cost Principles

- Consolidation (Except for Hospitals and Commercial Entities)
- Builds on Changes from OMB’s Cost Consistency Project (Revisions to Circulars 5/10/04)
- Policy Guides (200.400-402)

--- Applicable to Grants, Cooperative Agreements, Cost Reimbursement Contracts, and Other Contracts Where Cost is Used in Pricing, Administration or Settlement

--- Applicable to Lower Tier Awards

- General Tests of Allowability (200.403)
- Key Change—“Prior Approval” and “Advance Understanding” (200.407)
Direct and Indirect (F&A) Costs

- Distinctions Reiterated
- General Policies (200.411-419)
  --- Special Rules for State, Local and Tribal Governments and for IHE’s
- Required Federal Agency Recognition of IDC Rates
  --- Exceptions Require Action by Agency Head
- New Policies for Indirect Costs of Subrecipients
- Migration of All Guidance on IDC (F&A) Plan Development and Negotiation Migrates to Appendices
- Future for Additional Guidance Materials (e.g. HHS’ OASMB C-10 and DOL Indirect Cost Determination Guide)?
Key Changes to Selected Items of Cost

• Compensation for Personal Services (200.430)
--- Documentation of Time and Effort
----- Key Principles Remain: After-the-fact; Full disclosure; Credible Signatures; Timely Completion
• Conferences (200.432)
• Contingency Provisions (200.433)
• Depreciation (200.436)
• Equipment (200.439) and Materials and Supplies (200.453)
• Intellectual Property (200.448)
Key Changes to Selected Items of Cost

- Pre-award (200.458) and Proposal (200.460) Costs
- Rearrangement and Reconversion (200.462)
- Termination Costs (200.471)
- Training (200.472)
- Travel (200.474)
Revised Single Audit Requirements

• Revision Objectives: Concentrate Audit Resources, Oversight and Resolution on Higher Dollar Higher Risk Federal Awards

• The Means:
---Increase the Dollar Threshold
---Adjust the Number of Compliance Issues to Be Tested
---Clarify and Streamline Determination of Programs and Awards to be Tested
---Better Coordinate Resolution of Audit Findings
Keeping Some; Moving Some

• Portions of Existing Circular A-133 Have Worked and Are Being Retained

--- Delineation of Roles and Responsibilities

--- Instructions to Auditors about Audit Scope, Risk Assessment, and Conduct of Field Work and Reporting

• Migration of Features Involving Grants Management and Pass-through Entity Responsibilities to 200.300 and 200.425

--- Say “Good-bye” to “Vendor”
Changing Some

- Increase in the Audit Threshold to $750,000 in Federal Awards Expended for Fiscal Years Starting On or After December 26, 2014.
- Auditor Selection (200.509)
- Audit Management and Resolution at the Federal Level (200.513)
- Determination of Major Programs (200.518)

--- “Percentage of Coverage” Rule

- Compliance Issues to Be Tested (See Commentary, FR 12/26/13, p. 78608)
- Reporting of Questioned Costs (200.516)
- Timing of Management Decisions (200.521)
A Few Suggestions

• Get fully caffeinated and read the whole thing
• Note and heed the clear influences on OMB’s decisionmaking
• Note the implementation timetable

--- No need to be a “Sooner”

--- On the other hand, there are some things where it may be to your advantage to try to start now.

----- Fix language in your policies (e.g., references to Circulars)
----- Review grant application budgeting procedures
----- Review procurement procedures
----- Review subgranting and subrecipient monitoring procedures
• Monitor OMB and federal agency actions

--- OMB and COFAR websites (Q&A)
• Continue to provide input
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